

ally, and adding subpar. (C) as probable intent of Congress in light of absence of subpar. (C) in par. (4). Prior to amendment, subpar. (B) read as follows: “Any reference to section 503, 505, 507, or 515 is a reference to section 503, 505, 507, or 515 of the Federal Food, Drug, and Cosmetic Act.”

Subsec. (f)(7), (8). Pub. L. 100-670, §201(g)(3), added pars. (7) and (8).

Subsec. (g)(1)(A). Pub. L. 100-670, §201(h)(1)(A), (2), substituted “new drug, antibiotic drug, or human biological product” for “human drug product” and “paragraph (6)” for “paragraph (4)”.

Subsec. (g)(1)(B). Pub. L. 100-670, §201(h)(1)(B), substituted “new drug, antibiotic drug, or human biological product” for “human drug product” in introductory provisions and “product” for “human drug product” in cls. (i) and (ii).

Subsec. (g)(2)(A), (3)(A). Pub. L. 100-670, §201(h)(3), substituted “paragraph (6)” for “paragraph (4)”.

Subsec. (g)(4), (5). Pub. L. 100-670, §201(h)(4), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (g)(6). Pub. L. 100-670, §201(h)(4), redesignated former par. (4) as (6).

Subsec. (g)(6)(B)(i). Pub. L. 100-670, §201(h)(5)(A), substituted “paragraph (1)(B) or (4)(B) was submitted and no request for the authority described in paragraph (5)(B) was submitted” for “paragraph (1)(B) was submitted”.

Subsec. (g)(6)(B)(ii). Pub. L. 100-670, §201(h)(5)(B), substituted “paragraph (2)(B) or (4)(B)” for “paragraph (2)”.

Subsec. (g)(6)(C). Pub. L. 100-670, §201(h)(5)(C), inserted “or in the case of an approved product which is a new animal drug or veterinary biological product (as those terms are used in the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act), three years” after “exceed two years”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title IV, §4404] of Pub. L. 106-113 effective on date that is 6 months after Nov. 29, 1999, and, except for design patent application filed under chapter 16 of this title, applicable to any application filed on or after such date, see section 1000(a)(9) [title IV, §4405(a)] of Pub. L. 106-113, set out as a note under section 154 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(a)(10)(A)] of Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103-465, set out as a note under section 154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 273, 282 of this title.

§ 157. Statutory invention registration

(a) Notwithstanding any other provision of this title, the Director is authorized to publish a statutory invention registration containing the specification and drawings of a regularly filed application for a patent without examination if the applicant—

(1) meets the requirements of section 112 of this title;

(2) has complied with the requirements for printing, as set forth in regulations of the Director;

(3) waives the right to receive a patent on the invention within such period as may be prescribed by the Director; and

(4) pays application, publication, and other processing fees established by the Director.

If an interference is declared with respect to such an application, a statutory invention registration may not be published unless the issue of priority of invention is finally determined in favor of the applicant.

(b) The waiver under subsection (a)(3) of this section by an applicant shall take effect upon publication of the statutory invention registration.

(c) A statutory invention registration published pursuant to this section shall have all of the attributes specified for patents in this title except those specified in section 183 and sections 271 through 289 of this title. A statutory invention registration shall not have any of the attributes specified for patents in any other provision of law other than this title. A statutory invention registration published pursuant to this section shall give appropriate notice to the public, pursuant to regulations which the Director shall issue, of the preceding provisions of this subsection. The invention with respect to which a statutory invention certificate is published is not a patented invention for purposes of section 292 of this title.

(d) The Director shall report to the Congress annually on the use of statutory invention registrations. Such report shall include an assessment of the degree to which agencies of the Federal Government are making use of the statutory invention registration system, the degree to which it aids the management of federally developed technology, and an assessment of the cost savings to the Federal Government of the use of such procedures.

(Added Pub. L. 98-622, title I, §102(a), Nov. 8, 1984, 98 Stat. 3383; amended Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(a)(10)(A), (11)], Nov. 29, 1999, 113 Stat. 1536, 1501A-582, 1501A-583.)

AMENDMENTS

1999—Subsecs. (a), (c). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(10)(A), substituted “Director” for “Commissioner” wherever appearing.

Subsec. (d). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(a)(11)], substituted “Director” for “Secretary of Commerce”.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 102(c) of Pub. L. 98-622 provided that: “The amendments made by this section [enacting this section and item 157 in the table of sections of this chapter] shall take effect six months after the date of enactment of this Act [Nov. 8, 1984].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 111 of this title.

CHAPTER 15—PLANT PATENTS

Sec.	
161.	Patents for plants.
162.	Description, claim.
163.	Grant.
164.	Assistance of Department of Agriculture.

§ 161. Patents for plants

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

(June 19, 1952, ch. 950, 66 Stat. 804; Sept. 3, 1954, ch. 1259, 68 Stat. 1190.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 31, part (R.S. 4886, amended (1) Mar. 3, 1897, ch. 391, § 1, 29 Stat. 692, (2) May 23, 1930, ch. 312, § 1, 46 Stat. 376, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The provision relating to plants in the corresponding section of existing statute is made a separate section.

AMENDMENTS

1954—Act Sept. 3, 1954, provided that plant seedlings, discovered, propagated asexually, and proved to have new characteristics distinct from other known plants are patentable.

CROSS REFERENCES

Patentability of inventions generally, see section 100 et seq. of this title.

Plant Variety Protection, see section 2321 et seq. of Title 7, Agriculture.

§ 162. Description, claim

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible.

The claim in the specification shall be in formal terms to the plant shown and described.

(July 19, 1952, ch. 950, 66 Stat. 804.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 33, part (R.S. 4888, amended (1) Mar. 3, 1915, ch. 94, § 1, 38 Stat. 958, (2) May 23, 1930, ch. 312, § 2, 46 Stat. 376).

The first paragraph is the provision in R.S. 4888 (see section 112). The second paragraph is not in the statute but represents the actual practice.

§ 163. Grant

In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.

(July 19, 1952, ch. 950, 66 Stat. 804; Pub. L. 105-289, § 3(a), Oct. 27, 1998, 112 Stat. 2781.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 40, part (R.S. 4884, amended May 23, 1930, ch. 312, § 1, 46 Stat. 376).

This provision is from R.S. 4884 (see section 154) amended in language.

AMENDMENTS

1998—Pub. L. 105-289 reenacted section catchline without change and amended text generally. Prior to

amendment, text read as follows: “In the case of a plant patent the grant shall be of the right to exclude others from asexually reproducing the plant or selling or using the plant so reproduced.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-289, § 3(b), Oct. 27, 1998, 112 Stat. 2781, provided that: “The amendment made by subsection (a) [amending this section] shall apply to any plant patent issued on or after the date of the enactment of this Act [Oct. 27, 1998].”

FINDINGS AND PURPOSES

Pub. L. 105-289, § 2, Oct. 27, 1998, 112 Stat. 2780, provided that:

“(a) FINDINGS.—The Congress makes the following findings:

“(1) The protection provided by plant patents under title 35, United States Code, dating back to 1930, has historically benefited American agriculture and horticulture and the public by providing an incentive for breeders to develop new plant varieties.

“(2) Domestic and foreign agricultural trade is rapidly expanding and is very different from the trade of the past. An unforeseen ambiguity in the provisions of title 35, United States Code, is undermining the orderly collection of royalties due breeders holding United States plant patents.

“(3) Plant parts produced from plants protected by United States plant patents are being taken from illegally reproduced plants and traded in United States markets to the detriment of plant patent holders.

“(4) Resulting lost royalty income inhibits investment in domestic research and breeding activities associated with a wide variety of crops—an area where the United States has historically enjoyed a strong international position. Such research is the foundation of a strong horticultural industry.

“(5) Infringers producing such plant parts from unauthorized plants enjoy an unfair competitive advantage over producers who pay royalties on varieties protected by United States plant patents.

“(b) PURPOSES.—The purposes of this Act [see section 1 of Pub. L. 105-289, set out as a Short Title of 1998 Amendments note under section 1 of this title] are—

“(1) to clearly and explicitly provide that title 35, United States Code, protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced;

“(2) to make the protections provided under such title more consistent with those provided breeders of sexually reproduced plants under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as amended by the Plant Variety Protection Act Amendments of 1994 (Public Law 103-349); and

“(3) to strengthen the ability of United States plant patent holders to enforce their patent rights with regard to importation of plant parts produced from plants protected by United States plant patents, which are propagated without the authorization of the patent holder.”

CROSS REFERENCES

Patent as grant of right to exclude others from making, using, offering for sale, or selling the invention throughout the United States, see section 154 of this title.

§ 164. Assistance of Department of Agriculture

The President may by Executive order direct the Secretary of Agriculture, in accordance with the requests of the Director, for the purpose of carrying into effect the provisions of this title with respect to plants (1) to furnish available information of the Department of Agriculture, (2) to conduct through the appropriate bureau or division of the Department research upon special

problems, or (3) to detail to the Director officers and employees of the Department.

(July 19, 1952, ch. 950, 66 Stat. 804; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(a)(10)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A–582.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 56a (May 23, 1930, ch. 312, § 4, 46 Stat. 376).

Language is changed.

AMENDMENTS

1999—Pub. L. 106–113 substituted “Director” for “Commissioner” in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Agriculture, with certain exceptions, to Secretary of Agriculture, with power to delegate, see Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

CROSS REFERENCES

Agricultural research on plants, see section 427 of Title 7, Agriculture.

Plant Variety Protection, see chapter 57 of Title 7.

CHAPTER 16—DESIGNS

Sec.

- 171. Patents for designs.
- 172. Right of priority.
- 173. Term of design patent.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 122 of this title.

§ 171. Patents for designs

Whoever invents any new, original and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

(July 19, 1952, ch. 950, 66 Stat. 805.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 73 (R.S. 4929, amended (1) May 9, 1902, ch. 783, 32 Stat. 193, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212; R.S. 4933).

The list of conditions specified in the corresponding section of existing statute is omitted as unnecessary in view of the general inclusion of all conditions applying to other patents. Language is changed.

CROSS REFERENCES

Additional remedy for infringement of design patent, see section 289 of this title.

Patentability of inventions generally, see section 100 et seq. of this title.

Unauthorized use of patented designs, see section 289 of this title.

§ 172. Right of priority

The right of priority provided for by subsections (a) through (d) of section 119 of this

title and the time specified in section 102(d) shall be six months in the case of designs. The right of priority provided for by section 119(e) of this title shall not apply to designs.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 103–465, title V, § 532(c)(2), Dec. 8, 1994, 108 Stat. 4987.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 32, part (R.S. 4887, amended (1) Mar. 3, 1903, ch. 1019, § 1, 32 Stat. 1225, 1226, (2) June 19, 1936, ch. 594, 49 Stat. 1529, (3) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

This provision is taken from R.S. 4887 (see section 119) and made a separate section.

AMENDMENTS

1994—Pub. L. 103–465 substituted “subsections (a) through (d) of section 119” for “section 119” and inserted at end “The right of priority provided for by section 119(e) of this title shall not apply to designs.”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103–465, set out as a note under section 154 of this title.

§ 173. Term of design patent

Patents for designs shall be granted for the term of fourteen years from the date of grant.

(July 19, 1952, ch. 950, 66 Stat. 805; Pub. L. 97–247, § 16, Aug. 27, 1982, 96 Stat. 321; Pub. L. 103–465, title V, § 532(c)(3), Dec. 8, 1994, 108 Stat. 4987.)

HISTORICAL AND REVISION NOTES

Based on Title 35, U.S.C., 1946 ed., § 77 (R.S. 4931). Language is changed slightly.

AMENDMENTS

1994—Pub. L. 103–465 inserted “from the date of grant” after “years”.

1982—Pub. L. 97–247 substituted “Patents for designs shall be granted for the term of fourteen years” for “Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 effective 6 months after Dec. 8, 1994, and applicable to all patent applications filed in the United States on or after that effective date, with provisions relating to earliest filed patent application, see section 534(b)(1), (3) of Pub. L. 103–465, set out as a note under section 154 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of this title.

CROSS REFERENCES

Term of patent, see section 154 of this title.

CHAPTER 17—SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

Sec.

- 181. Secrecy of certain inventions and withholding of patent.